

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL NO. 2543,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 81-029
)	
CITY OF POPLAR BLUFF, MISSOURI,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case is before the State Board of Mediation upon the petition of International Association of Fire Fighters, Local 2543, seeking clarification of the bargaining unit. The petition requested that the bargaining unit include six employees classified as Captains, one Mechanic, one Safety Officer, and three Shift Commanders. The city of Poplar Bluff, Missouri, Respondent, contends that there is a valid Memorandum of Agreement which excludes the Captains, Mechanic, and Safety Officer from the bargaining unit. Respondent also contends that those employees classified as Shift Commanders should be excluded from the bargaining unit because they are supervisors.

On January 7, 1982, a hearing was held in Poplar Bluff, Missouri, at which representatives from Local 2543 and the city of Poplar Bluff were present. Chairman Gant became ill during the hearing, however, the parties agreed to continue the hearing. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

The city of Poplar Bluff Fire Department currently includes the following positions: Fire Chief, Shift Commanders, Captains, Mechanic, Safety Officer, and Firefighters. In 1978 the State Board of Mediation certified a bargaining unit sought by Petitioner consisting of what is currently the position of Petitioner. The Board excluded from the unit the positions of Fire Chief, Captains, Mechanic, and Safety Officer (the current Memorandum of Agreement adopted to by the parties is in effect from January 5, 1981 to January 5 1983, and is based on the unit certified by the Board in 1978). Since the Captains, Mechanic, and Safety Officer were excluded from the unit under the Memorandum of Agreement, the Board sustained Respondent's Motion to Dismiss the part of the petition asking for a clarification of these positions on the basis that it is untimely. The only issues that remained before the Board is whether the Shift Commanders, whose positions were created ten months after the Memorandum of Agreement, should be included in the bargaining unit or excluded on the basis that they are supervisors. Relevant to this issue is the language of Article II of the Memorandum of Agreement which states:

Recognition

The employer recognizes the Union as the exclusive bargaining agent for all employees of the Fire Department that are deemed members of the bargaining unit by the State Board of Mediation and any other position reinstated or made by the Fire Chief, City Manager or the City Council.

The City of Poplar Bluff Fire Department consists of three Fire Houses. Fire Station No. 1 is the headquarter station, and houses, among others, the Fire Chief and

three Shift Commanders. Each of the three Shift Commanders are assigned to work rotating twenty-four hour shifts. The employees located at Station No. 2 and No. 3 consist of six Captains who are evenly divided among the two houses.

When the situation arises, due to illness or some other circumstances, Stations No. 2 and No. 3 will be short of firefighters on a particular shift, the Captain will call Fire Station No. 1. If the Fire Chief is unavailable it is then the responsibility of the Shift Commander to assign or transfer personnel to handle the situation.

In the event a disciplinary problem arises, the Captain will make a written report and submit it to the next higher ranking position, which is the Shift Commander. The Shift Commander then recommends to the Fire Chief what kind of disciplinary action should be taken.

Some of the routine duties of the Fire Department include the cleaning of the Fire Houses, which includes the cleaning and maintenance of equipment. The person responsible for assigning personnel to take care of these jobs at House No. 1 is the Shift Commander. Due to the small number of employees in the Fire Department the Shift Commander will sometimes participate in these duties.

At the scene of a fire requiring personnel from Fire House No. 1 and one of the other Firehouses, the Fire Chief will set up a command post and control the firefighting activity. When he is unavailable it is the responsibility of the Shift Commander to take his place. This includes the authority to position men and equipment so as to fight the fire.

The base pay of a Shift Commander is higher than the pay of the Captains, whose base salary is higher than that of the firefighters. In addition, the city contributes two-thirds of the cost of insurance, and hospitalization for the Shift Commander. The

city only contributes one-third of the cost of insurance and hospitalization for the Captains.

CONCLUSIONS OF LAW

The State Board of Mediation finds that any discussion of the Safety Officers, Mechanic, and Captains are untimely due to the fact that they are presently excluded from the bargaining unit under the existing Memorandum of Agreement. The Board in certifying the bargaining unit in 1978 determined that the above three job classifications were to be excluded from the unit. In the case of International Association of Fire Fighters, Local 2453 vs. City of Poplar Bluff, Missouri, Public Case No. 78-001 (SBM 1978), the Board ruled that the position of Captain was a supervisory position and therefore excluded from the bargaining unit. A change in the certification of a unit is untimely unless it is filed no earlier than 90 days and not later than 61 days before the termination of the agreement. If not, the petition for clarification must be denied under "contract bar rule" which is recognized by this Board if an employer (1) meets, confers, and discusses proposals concerning the customary terms and conditions of employment with the employee's bargaining representative, (2) reduces those discussions to writing (3) presents such proposals to the appropriate governing body, and (4) the governing body adopts those proposals, American Federation of Teachers Local 470 vs. St. Louis Board of Education and Association of Education Secretaries, Public Case No. 79-055 (SBM 1979).

Since there is no dispute that a valid Memorandum of Agreement is in effect, the Board rules that it cannot address the part of the petition pertaining to Mechanics, Safety Officer, and Captains.

Petitioner contends that the position of Shift Commander, which was created ten months after the effective date of the Memorandum of Agreement, should be included in the unit under Article II which states:

Recognition

The Employer recognizes the Union as the exclusive bargaining agent for all employees of the Fire Department that are deemed members of the bargaining unit by the State Board of Mediation and any other position reinstated or made by the Fire Chief, City Manager or the City Council.

Petitioner claims that his provision must be strictly construed to mean that any new position created during the course of the Memorandum of Agreement has to be included in the bargaining unit. If the Board were adopt this position is would be, in effect, abdicating it's responsibilities granted under Chapter 105.525, RSMo 1978.

A petitioner attempting to include a new job classification in the bargaining unit must show that the inclusion would be appropriate as defined by Section 105.500 (1), RSMo 1978, which states:

"a unit of employees at any plant of installation or in a craft or in a function of a public body which establishes a clear and identifiable "community of interest" among the employees concerned."

The State Board of Mediation recognizes that certain employees possess sufficient supervisory status to warrant their exclusion from the bargaining unit of other employees. This supervisory status separates them from the "community of interest" which is shared among employees in the unit.

The evidence presented makes it clear that the three Shift Commanders are supervisors and should be excluded from the bargaining unit sought by Petitioner. In Local 1921 vs. City of St. Charles, Public Case No. 79-024 (SBM 1979), and Teamsters Local 610 vs. Afton Fire Protection District, Public Case No. 81-007 (SBM 1981), among other cases, the Board has articulated factors to consider in determining the supervisory status of employees to include: (1) the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; (2) the authority to direct and assign the work force including a consideration of the amount of independent judgment or discretion involved in such a decision, (3) the number of employees supervised and

the number of other persons exercising greater, similar, or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether a person is paid for his or her skill or for his or her supervision of other employees; (5) whether a person primarily supervises an activity or primarily supervises other employees; (6) whether a person is a working supervisor or whether he or she spends a substantial majority of work time overseeing others.

The evidence shows that the Shift Commander has the authority to transfer and assign the employees of the fire department in case there is a problem and the Fire Chief is unavailable. It is also clear that a Shift Commander is a higher ranking officer than the Captain and that the Captains count on the independent judgment or discretion of the Shift Commanders to solve a problem. The Shift Commander, in the absence of the Fire Chief, also has the complete authority at the scene of a fire. This places him in a position of authority over both the Captain and Firefighters at the scene. It is also clear that the pay of the Shift Commander is a supervisor and therefore excluded from the bargaining unit sought by Petitioner.

DECISION

It is the decision of the Board that the Petition for Clarification of the bargaining unit is untimely, and that Shift Commanders are excluded from the unit because they are supervisors.

Signed this 30th day of March, 1982.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ William Hunker
William Hunker, Employee Member

/s/ C. J. Yaeger
Charles Yaeger, Employer Member